

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,)	Cause No. CR-03-80-BLG-RFC
)	
Plaintiff,)	
)	
v.)	O R D E R
)	
JOSE ARTURO TENORIO,)	
)	
Defendant.)	
_____)	

This Court sentenced Defendant to a term of 120 months imprisonment in July of 2004. This sentence was rendered pursuant to the United States Sentencing Guidelines, which at the time were mandatory. Subsequently, the United States Supreme Court has held that the Federal Sentencing Guidelines are advisory. *United States v. Booker*, 125 S.Ct. 738, 764 (2005). On April 21, 2006, the Ninth Circuit remanded Defendant's sentence for reconsideration in light of *Booker* and *Ameline*.

Pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005), this Court must determine "whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory." *Id.* at 1084-85.

In this instance, after reviewing the record, the Court answers the question in the negative-- Defendant Tenorio's sentence would not have been materially different had it known that the Guidelines were advisory.

Under *United States v. Mix*, ____ F.3d ____, 2006 WL 1549737 (9th Cir. 2006), this Court is required, in fashioning a reasonable sentence to conduct parallel analysis – first employing the Guidelines, and then considering the non-guideline sentencing factors under § 3553(a). Pursuant to this directive, the Court concludes that the Guidelines do adequately take account of the § 3553(a) sentencing factors. Therefore, the Court determines that resentencing Defendant Tenorio is unwarranted as his sentence would not materially differ under the advisory guideline regime.

Moreover, Defendant Tenorio, in his response to the Court, acknowledged that his sentence would not be affected under the advisory holding of *Booker*.

DATED this 21st day of June, 2006.

/s/ Richard F. Cebull
RICHARD F. CEBULL
U.S. DISTRICT JUDGE

CERTIFICATE OF SERVICE

DATE: 6/21/06

BY: _____

I hereby certify that a copy of
this Order was served upon:

James Obie

Marcia Hurd